# Lee Tai Kau v Rajanderan Manickam

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO 23–236 OF 1992
ABDUL MALIK ISHAK J
19 AUGUST 1995

***Tort*** *— Negligence — Res ipsa loquitor — Motor accident — Vehicle on the wrong side of the road — Prima facie case of negligence — Onus on defendants*

***Damages (Personal Injury or Death)*** *— Fatal accident — Special damages — Special damages must be specifically pleaded and proved*

***Damages (Personal Injury or Death)*** *— Fatal accident — Dependency — Loss of support claim by parents of deceased — Pre and post trial loss — Civil Law Act 1956 s 7(3)*

X was driving a motor bus along a stretch of the road (which had a slight left bend) when a motor lorry (driven by the first defendant) coming from the opposite direction encroached into his side of the road. X quickly manoeuvred the bus to the left but to no avail. The motor lorry crashed into the right rear side portion of the bus causing extensive damage. X then stopped the bus. The first defendant fled the scene and the lorry was left abandoned on X's side of the road. The motorcycle driven by the deceased at the material time was lying underneath the lorry. The defendants suggested that the accident was caused by the contributory negligence of the deceased, that the deceased did not see the earlier collision between the motor bus and the motor lorry and by the time he reached the brow of the hill, he realised it was too late for him to brake in order to avoid colliding into the stationary lorry that had blocked almost the whole left side of the road. The plaintiffs were the parents of the deceased, who were dependent on the deceased's support. The plaintiffs relied on the doctrine of res ipsa loquitur to show that the first defendant, who drove the motor lorry at the material time, was negligent.

**Held,** allowing the plaintiffs' claim and assessing damages as follows:

(1) The event which the plaintiffs relied upon was that the motor lorry suddenly encroached and entered on its wrong side and there collided with, firstly, the motor bus and, secondly, the deceased motorcyclist which were being driven and ridden respectively in a normal manner and on its correct side of the road as opposed to the defendants' motor lorry. In the ordinary course of things, such an event could not happen if the first defendant as driver of the motor lorry had used proper care and the fact that it did happen the way it did, established a prima facie case of negligence against the defendants.

(2) The plaintiffs would therefore succeed unless the defendants rebutted this prima facie case which they might do in one of two ways — either the defendants proved that the event, ie the sudden turn of the motor lorry across the road on its wrong side was due to a specific cause and such cause was not attributable to lack of care on their part, or, that that event was due to some cause unknown but the first defendant as the driver of the motor lorry throughout the whole episode exercised reasonable care.

(3) The defendants must prove that throughout reasonable care was exercised and everything was done to the level that a reasonable, careful and competent driver would have done in these circumstances. The defendants did not adduce evidence through themselves or call witnesses to rebut the negligence that had been shifted to them; they had not discharged their onus. The police report filed by the first defendant did not rebut the case for the plaintiff.

(4) It was established beyond doubt that the accident occurred on X's correct side of the road because of X's testimony and the fact that the motorcycle was entangled underneath the motor lorry and all three vehicles were located on the left side of the road. By necessary inference, the deceased was travelling the same way as X because the defendants did not put to X that the deceased came from the opposite direction.

(5) When the first defendant encroached he had entered the continuous double white lines and in doing so he had breached r 21 of the Highway Code. Looking at the frontal damage to the motorcycle and the damage incurred by the lorry from the photographs, the first defendant did not reduce his speed on entering the brow of the hill and consequently, the first defendant had run foul of r 23 of the Highway Code. The first defendant was wholly to be blamed.

(6) Special damages must be specifically pleaded and proved and it was not enough for the plaintiff to simply write down the particulars and throw it to the court to decide. The exact loss must be pleaded as it had become clear that it could be measured with certainty and with complete accuracy. In this way, the defendants would not be put off guard and they would know what they had to meet when the case came up for trial.

(7) Special damages was agreed at RM4,022.

(8) For the father, pre-trial loss was assessed at RM3,700 whilst post-trial loss was assessed at RM4,700 by applying a multiplier of 7.

(9) For the mother, pre-trial loss was assessed at RM7,400 whilst post-trial loss was assessed at RM9,400 by applying a multiplier of 7.

A **[Bahasa Malaysia summary**

X sedang memandu sebuah bas sepanjang sebatang jalan (yang mempunyai satu selekoh kiri) apabila sebuah lori (yang dipandu oleh defendan pertama) dari arah bertentangan memotong masuk ke dalam bahagian jalannya. X dengan cepat memandu basnya ke
B kiri tetapi terlambat. Lori itu melanggar bahagian belakang kanan bas itu mengakibatkan kerosakan yang teruk. X kemudiannya memberhentikan bas itu. Defendan pertama melarikan diri dari tempat kejadian itu dan lori itu ditinggalkan pada belah jalan X. Motorsikal yang ditunggang oleh si mati pada masa yang berkenaan dihempap di bawah lori itu. Defendan mencadangkan bahawa
C kemalangan itu disebabkan oleh kecuaian sertaan si mati, bahawa si mati tidak melihat pelanggaran lebih awal di antara bas dan lori itu dan ketika si mati menghampiri dahi bukit, beliau sedar bahawa ianya terlalu lewat baginya membrek supaya mengelak dari melanggar ke dalam lori tidak bergerak yang telah menyekat hampir
D keseluruhan bahagian kiri jalan itu. Plaintif adalah ibu bapa si mati yang bergantung kepada sokongan si mati. Plaintif menggunakan doktrin res ipsa loquitur untuk menunjukkan bahawa defendan pertama, yang memandu lori itu, telah cuai.

**Diputuskan,** membenarkan tuntutan plaintif dan mentaksirkan
E ganti rugi seperti berikut:

(1) Plaintif bergantung pada kejadian di mana lori telah secara tiba-tiba memotong masuk ke belah jalan yang salah dan oleh itu berlanggar dengan, pertamanya, bas itu dan, keduanya, motorsikal si mati yang masing-masing dipandu dan ditunggang
F dalam cara yang biasa pada belah jalan yang betul bertentangan dengan lori defendan. Dalam aliran kejadian yang biasa, kejadian sedemikian tidak mungkin berlaku jika defendan pertama sebagai pemandu lori itu telah bercermat secara yang patut dan hakiakt bahawa iaya berlaku dalam cara sebegitu, mendirikan kes prima facie kecuaian terhadap defendan.

G

(2) Plaintif oleh itu akan berjaya melainkan defendan berjaya mematahkan kes prima facie ini yang boleh dilakukan dalam satu daripada dua kaedah — sama ada defendan membuktikan bahawa kejadian itu, iaitu pergerakan secara tiba-tiba lori itu melintangi jalan pada belah yang salah adalah diakibatkan
H oleh sebab yang tertentu dan sebab itu tidak boleh dikatakan berpunca dari kekurangan bercermat pada belah defendan, atau, bahawa kejadian itu adalah diakibatkan oleh sebab yang tidak diketahui tetapi defendan pertama sebagai pemandu lori itu pada semua masa telah melaksanakan tugas bercermat yang munasabah.

I

(3) Defendan mesti membuktikan bahawa pada semua masa tugas bercermat yang munasabah telah dilaksanakan dan kesemuanya telah dilakukan ke takat yang akan dilakukan oleh seorang

pemandu yang munasabah, cermat dan cekap dalam keadaan sedemikian. Defendan tidak mengemukakan sebarang keterangan melalui diri mereka sendiri atau memanggil saksi untuk mematahkan kecuaian yang telah diletakkan pada mereka; mereka tidak menjalankan tugas mereka. Laporan polis yang difailkan oleh defendan pertama tidak mematahkan kes untuk plaintif.

(4) Telah dibuktikan melampaui keraguan bahawa kemalangan itu berlaku pada belah jalan X yang betul kerana keterangan X dan hakikat bahawa motorsikal itu dihempap di bawah lori itu dan kesemua ketiga-tiga kenderaan itu terletak pada belah kiri jalan itu. Melalui inferens yang patut, si mati telah bergerak dalam arah yang sama seperti X kerana defendan tidak meminta X membalas kepada pengataan bahawa si mati datang dari arah yang bertentangan.

(5) Apabila defendan memakan masuk ke belah yang salah beliau telah memasuki dua jalur putih berterusan dan dalam membuat demikian beliau telah mengingkari k 21 Kanun Jalanraya. Melihat kerosakan depan pada motorsikal dan kerosakan yang dialami oleh lori itu dari gambar foto, defendan pertama tidak mengurangkan halajunya apabila memasuki dahi bukit dan kesudahannya, defendan pertama telah menyalahi k 23 Kanun Jalanraya. Defendan pertama mestilah disalahkan sepenuhnya.

(6) Ganti rugi khas mesti dijadikan pliding secara spesifik dan dibuktikan dan tidaklah memadai untuk plaintif semata-mata menulis buit-butir dan mengemukakannya kepada mahkamah untuk diputuskan. Kerosakan tepat mesti dijadikan pliding kerana adalah jelas bahawa ianya boleh diukur dengan kepastian dan dengan kejituan yang penuh. Dalam cara ini, defendan tidak akan diperangkap secara mengejut dan mereka akan tahu apakah yang mesti dihadapi apabila kes dibicarakan.

(7) Ganti rugi khas dipersetujui pada RM4,022.

(8) Untuk si bapa, kerugian sebelum perbicaraan ditaksir pada RM3,700 sementara kerugian selepas perbicaraan ditaksir pada RM4,700 dengan memakai pengganda 7.

(9) Untuk si ibu, kerugian sebelum perbicaraan ditaksir pada RM7,400 sementara kerugian selepas perbicaraan ditaksir pada RM9,400 dengan memakai pengganda 7.]

**Notes**

For cases on damages in relation to fatal accidents, see 6 *Mallal's Digest* (4th Ed), paras 238–327.

**Cases referred to**

*Barkway v South Wales Transport* [1950] AC 185; [1950] 1 All ER 392 (refd)

*Chan Chin Ming v Lim Yok Eng* [1994] 3 MLJ 233 (folld)
*Chan Loo Khee v Lai Siew San & Ors* [1971] 1 MLJ 253 (distd)
*Chan Peng Fook v Kan Pak Lee* [1974] 2 MLJ 197 (refd)
*Guan Soon Tin Mining Co v Wong Fook Kum* [1969] 1 MLJ 99 (folld)
*Govinda Raju v Laws* [1966] 1 MLJ 188 (refd)
*Halijah v Velaitham* [1966] 1 MLJ 192 (refd)
*Lim Yok Eng v Chan Chin Min & Anor* [1994] 3 CLJ 792 (refd)
*Mohd Tajuddin bin Salleh v Mokhari bin Murgis & Anor* [1993] 3 CLJ 42 (refd)
*Ngooi Kim Chong v Subramaniam a/l Maruthan & Anor* [1990] 1 CLJ 799 (folld)
*Red And Yellow Omnibus Co Sdn Bhd & Anor v Chuah Lay Boon* [1993] 2 CLJ 480 (refd)
*Yahaya bin Mat v Abdul Rahman bin Abu* [1982] 1 MLJ 202 (refd)
*Yeap Cheng Hock v Kajima Taisei Joint Venture* [1973] 1 MLJ 230 (folld)

**Legislation referred to**

Civil Law Act 1956 s 7(3)

*Kamsimah Mohamed* (*Lau Kok Guan & Partners*) for the plaintiffs.
*Mohd Azuan bin Abdul Rahman* (*Balarajah & Co*) for the defendants.

**Abdul Malik Ishak J:** Both the parents ('the father' being the first plaintiff and 'the mother' being the second plaintiff) did not witness the accident that killed their 20 year old unmarried son ('the deceased') who was riding motorcycle JCE 3492 along the stretch of Jalan Johor Bahru- Kota Tinggi road on 19 July 1992 at about 8.40pm. Fortunately, some light was shed as to how the accident occurred through the evidence of Mohd Daud bin Che Mat (SP3) ('Daud') the driver of motor bus DN 1465. Daud testified that he was involved in an accident whilst driving the said motor bus ladened with passengers on his way to Kota Bahru from Johor Bahru and that accident occurred at 9½ milestone along the stretch of Jalan Johor Bahru-Kota Tinggi road. Daud testified that he left Johor Bahru at 8pm and that stretch of the road, at the material time, was quite dark without any street lights and he had to switch on the exterior front lights of the said motor bus. The road, however, was not busy. The weather condition was good and it was not raining either. Daud described that the road on his side had two lanes whilst the opposite traffic would be utilising only one lane. The investigating officer that arrived at the scene on that day was Corporal 72791 (now Sergeant) Mat Badri bin Hj Hassan (SP4 — 'the sergeant') and he drew the sketch plan of the accident as reflected in exh (P5). The sketch plan showed the measurements of the road that was utilised by Daud to be 11 ft between 'A' to 'B' and another 11 ft between 'B' to 'C'. This meant Daud had full access to 22 ft wide road as compared to the size of the road to be utilised by oncoming traffic

and this was at point 'C' to 'D' measuring 11 ft in width. There was a broken white line between 'A' to 'C' and this can be seen at point 'B'. Dividing the road utilised by Daud and that of the oncoming traffic was a double white line. Reverting back to the facts of the case, Daud proceeded to explain that he drove on his left side of the road and he was accustomed to that stretch of the road. Before the accident, Daud stated that he did not know that there was an oncoming vehicle from the opposite direction and he did not see whether there was any vehicle behind his motor bus. Daud testified that upon arrival at 9½ milestone of that stretch of the road, he saw a motor lorry coming from the opposite direction encroached into his side of the road. As soon as Daud saw this state of affairs he quickly manoeuvred the said motor bus to the left more towards the side table (as reflected in the sketch plan) but to no avail. That motor lorry rammed to the right rear side portion of the said motor bus, near to the right rear tyre of the said motor bus (see the photographs 'P7C' and 'P2J') causing extensive damage thereto. Daud stopped the said motor bus, alighted from it and saw the damage to his motor bus. Daud also saw the motor lorry bearing registration no JAU 1201 that had encroached and rammed his motor bus earlier on being left abandoned and unattended on his (Daud's) correct side of the road. The driver of that motor lorry was nowhere to be seen. Of pertinence, Daud also saw a motorcycle bearing registration no JCE 3492 lying underneath the motor lorry as reflected in photograph 'P6E'. With presence of mind, Daud left the motor bus with another standby driver in attendance together with all the passengers therein, and proceeded by taxi to contact an officer of the motor bus company and together they then proceeded to Ulu Tiram police station where Daud lodged a police report vide Ulu Tiram report no 2510/92 (see bundle marked C (ii) at p 15 where Daud's police report was marked as 'P4'). It is pertinent to mention here that Daud's police report at 'P4' reflects what he had said in court and this would surely add mileage to his evidence. Great weight would be attached to Daud's evidence. Daud took pains to mention relevant facts in his police report (see *Mohd Tajuddin bin Salleh v Mokhari bin Murgis & Anor* [1993] 3 CLJ 42 and the cases cited therein). Daud further testified that that stretch of the road had a slight bend and that bend was to the left of that road on Daud's side as reflected in the sketch plan. As Daud drove the said motor bus he used the third gear and was travelling at a speed of 40 kmh or 50 kmh and in so doing he took the right turn to drive that motor bus up the gradient. Under cross-examination, Daud emphasised that he drove the said motor bus on that day more to the left of the road. In fact he said he took the left lane (this must be between 'A' to 'B' in the sketch plan (P5)). It was put to Daud and this he agreed that when he first saw the motor lorry, that motor lorry was negotiating the right hand corner by using the middle of the road and thereafter encroached into Daud's correct side of the road. Lastly, Daud admitted under cross-examination that he switched the front lights of the said motor bus and the motor lorry too had its front lights on.

A B C D E F G H I

The sergeant explained the damage to the vehicles in cogent terms. In regard to the motor bus, the sergeant said:

> Bas itu mengalami kerosakkan di bahagian badan tayar belakang sebelah kanan.

Whilst in regard to the other two vehicles, the sergeant described in the following manner:

> Lori tanker mengalami kerosakkan di bahagian hadapan kanan.
>
> Motosikal mengalami kerosakkan di seluruh bahagian hadapan — semuanya remuk belaka.

The damage to the vehicles can best be seen in the colour photographs in exhibits 'P2A' to 'P20' and 'P7A' to 'P7D' and exact words cannot describe them.

The evidence of Daud inspires confidence. He has nothing to gain by lying since he had said that the police did not take any action against him. He is said to be an independent witness because he was there to describe what had happened to his motor bus. There are no circumstances tending to affect his impartiality.

Both the defendants did not turn up on the date of the continued hearing of the case. Both the solicitors acting for the parties agreed that they should proceed with their submissions without further ado. Encik Mohd Azuan bin Abdul Rahman for the defendants stated that he wished not to call the defendants nor any witnesses for that matter. Notwithstanding this, there was a police report enclosed in the agreed bundle marked C (ii) at p 18 containing the purported police report of the first defendant. That police report did not say much and since the defendants chose not to give evidence, on the authority of *Ngooi Kim Chong v Subramaniam a/l Maruthan & Anor* [1990] 1 CLJ 799, I ruled that that police report did not rebut the case for the plaintiff.

It was argued for the defendants that the accident could have happened in this way. That the motor lorry had encroached into the path of the motor bus and in so doing had collided into the rear right side near to the right tyre of the motor bus. Since the night was dark and without street lights, it was said that the deceased did not see the earlier collision between the motor lorry and the motor bus and this possibility was said to be probable by the gradient of the road where the deceased might not have seen what had happened earlier between those two vehicles and by the time he reached the brow of the hill, he realised that it was too late for him to brake in order to avoid colliding into the stationary motor lorry that had blocked almost the whole left side of the road. That was a novel proposition which was not put to Daud nor to the Sergeant. Encik Azuan, the learned counsel for the defendants, relied on a passage appearing in the dissenting judgment of Ong CJ (Malaya) in *Chan Loo Khee v Lai Siew San & Ors* [1971] 1 MLJ 253 (FC) in particular at p 256 where his Lordship said:

> As Mr Caplan, counsel for the plaintiff, argued in *Harvey v Road Haulage Executive* [1952] 1 KB 120, 122, movement of the vehicle in front could only be judged by its relationship to other objects on or off the road and for this reason I venture to say that most motorists driving at night cannot instantly tell, upon first sighting the tail-lights of another in front, whether it is moving or stationary. It must therefore have taken a few seconds before the shattering truth dawned on the defendant that, of all things, another motorist had seen fit to park his car where it had no business to be. By the time he realised that the Fiat was blocking his path the gap between the vehicles had of course been rapidly closing.

With respect, the facts in *Chan Loo Khee v Lai Siew San & Ors* (supra) are poles apart from the present case. There, it was a consolidated action involving three motor cars in an accident near Tanjong Malim where the road was straight and of good width. One of the cars was a Volkswagen driven by a schoolmaster who was returning home after a holiday in Kuala Lumpur. The second car was an Opel proceeding in the opposite direction towards Kuala Lumpur. The third car was a Fiat bound for Kuala Lumpur which the trial judge found as a fact to be stationary on the carriage way at the time of the accident. The learned trial judge found that the Fiat car was so parked with its side lights on, but held that 'in this position and in the circumstances of the accident, it could not and did not constitute such an obstruction to the Opel as to have contributed to the accident.' The trial judge further found the driver of the Opel wholly to blame for the accident and dismissed the claim for contribution by the driver of the Opel against the driver and owner respectively of the Fiat as third parties. On appeal, it was held that the driver of the Fiat motorcar was not guilty of negligence in parking his Fiat car on the road side with its parking lights on, as he could not have reasonably foreseen that his act in doing so would cause the accident, and therefore the learned trial judge was right in holding that the driver of the Opel car was wholly to blame for the accident. Here, the motor lorry was not parked like the Fiat car in *Chan Loo Khee*'s case (supra). Here, the motor lorry had just come to a stand still after colliding into the right rear portion of the motor bus and the driver, namely, the first defendant had, by the time Daud inspected the damage to his motor bus, fled from the scene. Here unlike there, there was reliance by the plaintiffs on the doctrine of res ipsa loquitur as reflected in the statement of claim to bring home the message that the first defendant who drove the motor lorry, at the material time, was negligent. As Lord Radcliffe observed in *Barkway v South Wales Transport* [1950] 1 All ER 392; [1950] AC 185 that an event which in the ordinary course of things is more likely than not to have been caused by negligence is by itself evidence of negligence. As I see it, the event which the plaintiffs rely upon in this case as evidence of negligence is that the motor lorry suddenly encroached and entered on its wrong side and there it collided with, firstly, the motor bus and, secondly, the deceased motorcyclist which were being driven and ridden respectively in a normal manner and on its correct side of the road as opposed to the defendants' motor lorry. In the ordinary course of things, such an event

A does not happen if the first defendant as driver of the motor lorry uses proper care and the fact that it did happen the way it did, establishes a prima facie case of negligence against the defendants. The plaintiffs therefore succeed unless the defendants rebut this prima facie case which they may do in one of two ways — either the defendants prove that the event, that is to say, the sudden turn of the motor lorry across B the road on its wrong side was due to a specific cause and such cause was not attributable to lack of care on their part, or, that that event as explained above is due to some cause unknown but the first defendant as the driver of the motor lorry throughout the whole episode exercised reasonable care. Put in another way, the defendants here (particularly C the first defendant) must prove affirmatively (since the onus is shifted onto them) that throughout reasonable care was exercised and everything was done to the level that a reasonable, careful and competent driver would have done in these circumstances (as an example see *Halijah v Velaitham* [1966] 1 MLJ 192). The question to ask is this: has the onus been rebutted? The answer is in the negative. The defendants here did D not adduce evidence through themselves or call witnesses to rebut the negligence that had been shifted to them.

Looking at the sketch plan and the key thereto, it established beyond doubt that the accident occurred on Daud's correct side of the road because of Daud's testimony and the fact that the motorcycle was E entangled underneath the motor lorry and all three vehicles were located on the left side of the road as one faces Kota Tinggi. By necessary inference, the deceased was travelling the same way as Daud because Encik Azuan did not put to Daud that the deceased came from the opposite direction. In fact, the pleadings put up by the plaintiffs adverted F to the deceased travelling from Johor Bahru towards Kota Tinggi in the same direction as Daud and this point was further enhanced by Azuan's submission on the probable theory that the deceased had collided onto the stationary motor lorry that had blocked the deceased's path as the deceased proceeded from the direction of Johor Bahru to Kota Tinggi. It is my judgment, that the deceased was riding that motorcycle from G the direction of Johor Bahru to Kota Tinggi when he met the accident and it is also my judgment that the first defendant had encroached into not only Daud's correct side of the road but also that of the deceased. Obviously, as pointed out by Cik Kamsimah Mohamed, the learned counsel for the plaintiffs, that when the first defendant encroached he had entered the continuous double white lines painted on that stretch H of the road and in doing so he had breached rule 21 of the Highway Code. Looking at the frontal damage to the motorcycle and the damage incurred by the motor lorry from the photographs, the first defendant did not reduce his speed on entering the brow of the hill and, consequently, the first defendant had run foul of rule 23 of the Highway I Code (see *Govinda Raju & Anor v Laws* [1966] 1 MLJ 188; *Yahaya bin Mat & Anor v Abdul Rahman bin Abu* [1982] 1 MLJ 202 FC and *Chan Peng Fook v Kan Pak Lee* [1974] 2 MLJ 197 where the courts considered the relevant Highway Code rules).

For the reasons adumbrated above, it is my finding that the first defendant is wholly to be blamed. The accident was caused solely by the negligence of the first defendant. The question of contributory negligence does not arise in the present case.

*Quantum*

As stated earlier, both the father and mother had lost their son upon whom they were dependant for support, in a road accident, and their claims being dependency claims under s 7(3) of the Civil Law Act 1956 ('the Act').

The father testified that the deceased was his third child. The first child by the name of Lee Pek Meng (f) has completed her tertiary education in Taiwan and is currently looking for a job there. The second child, a son by name of Lee Yew Meng, works as a tool and dye marker. The fourth child by the name of Lee Foo Meng is still schooling. The second child contributed financially to the tertiary education of Lek Pek Meng (f) in Taiwan. The father testified further that he is currently working in Brunei and earns B$2,000 per month with accommodation. The deceased, according to the father, was initially employed as a tool and dye maker and, at the time of his death, was promoted to the rank of a a tool room supervisor with Pole Metal Stamping Industries Sdn Bhd. The deceased was earning RM1,100 per month at the time of his death and out of that sum he gave RM200 per month to the father. The father spoke highly of the deceased. The father elaborated that the deceased took his meals in the house; that the deceased rode motorcycle JCE 3492 to work and paid monthly instalment for that motorcycle in the region of RM100 per month. The deceased was said to have started his working career in Singapore at the age of 17 but this assertion was denied by the mother. Be that as it may, the father described the deceased as being thrifty and that before his death, the deceased had a steady girlfriend. Though the deceased quite often dated his girlfriend, the father expressed reservations as to whether they would enchange marriage vows. The father agreed that the financial contribution by the deceased helped him a great deal. This was how the father described that contribution: 'Betul, ada peningkatan sumbangan wangnya kepada saya sebelum dia mati.' Again he said: 'Saya perlu sumbangan kewangan daripada anak saya yang telah mati.' The father testified that he was employed in Malaysia as a site supervisor of a construction company at the time of the deceased's death. Though the father initially testified that the deceased was paid monthly yet, under cross-examination, he agreed that the deceased was paid two weeks once in a month. The father stated that together with the deceased, they contributed to the incurring household expenses. There was, however, no evidence in what proportion the RM200 monthly contribution that the deceased gave to the father had gone to the household expenses. No evidence was led on this point and the father did not volunteer that information either.

Just like the father, the mother had nothing but praises for the deceased. The deceased was said to be dutiful and cared greatly for the younger sibling. The mother testified that the deceased received his salary twice a month and he would give her twice a month totalling approximately RM600 per month. The deceased's contribution to her was utilised well and it was said that that money went to the household expenditures like 'bayar sewa rumah, bil-bil dan perbelanjaan keluarga seperti beli sayor, beras, ikan, daging dan lain-lain.' She corroborated her husband when she said that the deceased had his meals at home and she prepared those meals for him. The deceased was working in the vicinity of Johor Jaya which was near to the family house and this must have encouraged him to take his meals at home. The mother declared that the deceased took his breakfast, lunch and dinner in the family home. In a show of support for her husband, the mother agreed that RM3,964 was incurred as funeral expenses even though her husband did not specify the amount except to say that he made the necessary funeral arrangements. The mother testified that on the date of the accident, it was a Sunday according to her, the deceased was on his way home after visiting his girlfriend and the accident had happened near the family home, The mother testified that before the deceased started work, her husband contributed to the household expenditure at RM500 per month and her husband continued with the same contribution even after the deceased started work. The mother testified that she knew that the deceased gave her husband RM200 per month. Attempts were made to discredit the mother by pointing out to her that her late son could not have given her and her husband those monthly contributions bearing in mind that on the average the deceased would be paid once in two weeks at the rate of RM550. She was quick to retort that the deceased gave both herself and her husband those monthly contributions. Still on the subject of monthly contributions, the mother testified, under cross-examination, that the deceased monthly contributions were utilised towards paying the house rent of RM200 per month plus other household expenditures. The mother preferred to use the deceased's monthly contribution as opposed to that of her husband's in settling the house rent. Finally, she agreed that the moneys that came from her husband and that of the deceased were jointly utilised to financially support the whole family. The mother testified that her husband is now gainfully employed in Brunei and he contributes RM1,000 to her every month. The mother testified further that if the deceased did not have any overtime he would return between 5pm to 6pm and that the deceased would hardly go out during working days after he had returned from the factory. She admitted that the deceased maintained a bank account but she did not know how much he deposited his money in the bank every month. The mother further testified that though the deceased did not demonstrate his desire to marry his girlfriend yet she strongly believed that he would do so, if he was still alive. In her reckoning, that marriage would have materialised within the span of two to three years, had the deceased been alive.

From the tenor of the evidence of both the parents, we are left guessing as to the exact quantum of the deceased's contributions that went to them personally. Both the parents stated that the contributions went to the family and not to them personally unlike the mother who lost her 25 year old son in *Lim Yok Eng v Chan Chin Min & Anor* [1994] 3 CLJ 792, who agreed that she spent half of the sum of RM750 per month which she received from her deceased's son on herself and the balance went to her three school-going children.

Section 7(3) of the Act enacts as follows:

> The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1).

Edgar Joseph Jr SCJ (now FCJ) delivering a separate partly dissenting judgment in *Chan Chin Ming v Lim Yok Eng* [1994] 3 MLJ 233 (SC) (this was a decision which came up on appeal from the case of *Lim Yok Eng v Chan Chin Min & Anor* (supra)) and this part of his Lordship's judgment which I am about to quote concurred with that part of the majority decision (Peh Swee Chin and Mohamed Dzaiddin SCJJ (now FCJJ)) in *Chan Chin Ming v Lim Yok Eng* (supra) and this was what his Lordship said (p 247):

> Having said that, the question of substance regarding this part of the case, was whether, having regard to the mother's admission that of the RM750 per month which she had received from the deceased, she had spent about one half on herself and the other half on her three school going children, her claim for loss of support under s 7(3) of the Act was thereby limited to the amount she had spent on herself and no more or whether it could be increased, to include in addition, what she had spent on her children?
>
> In my view, the plain, ordinary and grammatical meaning of the expression 'any loss of support suffered' appearing in s 7(3), must refer to the loss of support suffered by 'the party for whom and for whose benefit the action is brought'. In other words, the loss suffered must be personal to the class of dependants specified in s 7(2) so that a loss suffered by any other person not falling within that class must be excluded.
>
> Having regard to the mother's admission aforesaid, the loss of support suffered by her was RM375 per month only. For the court to increase the value of the loss of support to RM750 per month, by adding the sum that was spent by the mother on the three school-going children, to the sum she had spent on herself, would amount to departing from the plain, ordinary, and grammatical meaning of the statutory language of s 7(2).

It is obvious that what I have to consider next is to determine the appropriate multiplicand in quantifying the claim for loss of support for both the plaintiffs under s 7(3) of the Act. That the deceased earned RM1,100 per month before his death is beyond dispute and this is

clearly reflected in the agreed bundle of document at C (i) p 9 (*Red And Yellow Omnibus Co Sdn Bhd & Anor v Chuah Lay Boon* [1993] 2 CLJ 480). Out of RM1,100 it is my finding of fact that, firstly, the father received monthly contribution of RM200 from the deceased and, secondly, the mother received monthly contribution of RM600 from the deceased. In so far as the father is concerned, since there was evidence that the son's contribution to him went to the household expenses and such sum was not quantified by the father, I am inclined to hold that only RM100 (a token sum) was utilised for his own benefit and that will be the multiplicand to be used to quantify his claim for loss of support. As for the mother, out of RM600 that was given to her by the deceased on a monthly basis, she explained that RM200 went to pay house rent and the balance (here she did not quantify) went to the household expenditure. It would be fair to assume that RM200 out of the deceased's contribution must have been utilised by the mother for household expenditure after all the deceased's father was gainfully employed at all material times and on the evidence the father contributed RM500 for household expenditure. This is, in the circumstances, a fair assumption to make and I so hold accordingly. Thus, what remains out of the son's contribution would be RM200 (again a token sum) and that amount, I hold, is the appropriate multiplicand to rely upon in quantifying her loss of support.

By way of digression, I must say that the deceased, before his death, was left with RM300 per month for his personal use after he had dutifully performed his filial obligations to his parents. The sum of RM300 was further reduced by the monthly instalment of RM100 which the deceased had to pay for his motorcycle. Being thrifty, the deceased must have survived on RM200 bearing in mind that he had all his meals at home specially cooked by his mother and, above all, the deceased stayed in the family house with his parents. By necessary inference, the deceased must have used the sum of RM200 to purchase petrol for his motorcycle for him to go to work and also to visit his girlfriend. The death of the deceased must have been felt badly by both parents as they have lost a good son.

Be that as it may, on the authority of *Chan Chin Ming v Lim Yok Eng* (supra) (the majority decision), I have no choice but to use the multiplier of seven years instead of 16 years' purchase as set out in s 7(3) proviso (iv)(d) of the Act and the awards which I propose to give would be as follows:

*For the father (loss of support)*

Pre-trial loss

This is calculated from the date of accident (19 July 1992) to the date of judgment (19 August 1995) which gives the period as 3 years 1 month or 37 months.

Using the multiplicand of RM100 as a base, the award under this head would be: RM100 x 37 months = RM3,700.

Post-trial loss

Using the multiplier of seven years (which is equivalent to 84 months) and minus that period with 37 months, it would give 47 months as the balance. Thus, 84 months - 37 months = 47 months.

Using the multiplicand of RM100 times 47 months, the total amount would be RM4,700 (RM100 x 47 months = RM4,700).

*For the mother (loss of support)*

Pre-trial loss

Applying the same principle as that of the father, the result would be: RM200 x 37 months = RM7,400.

Post-trial loss

Applying the same principle as that of the father, the result would be as follows: RM200 x 47 months = RM9,400.

*Special damages*

This must be specifically pleaded and proved and it is not enough for the plaintiff to simply write down the particulars and throw it to the court to decide (*Yeap Cheng Hock v Kajima Taisei Joint Venture* [1973] 1 MLJ 230). The object of specifically pleading special damages is to crystallize the issue and to enable both parties to prepare for trial. Thus, the exact loss must be pleaded as it has become clear that it can be measured with certainty and with complete accuracy. In this way, the defendants will not be put off guard and they know what they have to meet when the case comes up for trial (*Guan Soon Tin Mining Co v Wong Fook Kum* [1969] 1 MLJ 99 at p 100).

The plaintiffs under this head applied, in the midst of the trial, to amend the quantum for funeral expenses from RM5,000 to RM3,964 and with an additional prayer that the balance would be subject to submission. This method of amendment is certainly unwise and should be frowned upon as there is no accuracy in the exact loss sustained by the plaintiffs. Be that as it may, the parties agreed to the amount of RM3,964 for funeral expenses and I so ordered accordingly. The plaintiffs decided to withdraw para (b), namely, the cost to extract letters of administration and I made an order to that effect. Two other items were agreed upon. They were: para (d) — autopsy report — at RM40; and para (e) — police report — at RM18. In the final analysis, the special damages allowed by me as agreed by the parties came to RM4,022.

Now, in regard to the interest, I shall award special damages at the rate of 4% pa from date of accident until the date of judgment and thereafter the plaintiffs would be entitled to 8% pa until realization. For general damages, I would award 6% pa from date of filing the writ to date of judgment. However, no interest would accrue for post trial losses incurred by the plaintiffs.

A On the basis of full liability, I made the abovementioned awards in favour of the plaintiffs with an ancillary order that the plaintiffs were entitled to the costs of these proceedings.

*Plaintiffs' claim allowed.*

Reported by Rebecca MK Lee

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